

35 U.S.C. § 103 if that subject matter and the claimed invention "were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."

DeCoster is assigned to L'Oréal, as indicated by the assignee information on the face of the patent as well as the copy of the executed assignment and corresponding Notice of Recordation of Assignment, attached herewith. The present application is also assigned to L'Oréal, as indicated by the copy of the executed assignment and corresponding Notice of Recordation of Assignment of the present application, attached herewith. Therefore, DeCoster is not applicable prior art under § 103. Accordingly, Applicants submit that the rejection under 35 U.S.C. § 103 is improper and should be withdrawn.

#### **CONCLUSION**

In view of the foregoing amendment and remarks, Applicants respectfully request the reconsideration and reexamination of this application and the timely allowance of pending claims 1-46.

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1. Status of the Claims

Claims 1-46 are pending in this application. Claim 7 has been amended to correct a typographical error, in response to the Examiner's objection on page 2 of the Office Action. Applicants thank the Examiner for pointing out this error. Support for the amendment can be found throughout the specification and claims as originally filed. Accordingly, no new matter has been added.

2. Priority

Applicants acknowledge the Examiner's statement of the law at page 2 of the Office Action, requiring the filing of a translation of the priority document in order to obtain the benefit of priority in the context of an interference. Under 37 CFR § 1.55, an English language translation need only be filed "in the case of an interference; or when necessary to overcome the date of a reference relied upon by the examiner; or when specifically required by the examiner." The undersigned telephoned the Examiner on January 4, 2001, and understood that the Examiner has no present intent of declaring an interference and does not otherwise require a translation of the priority document. Accordingly, it is not necessary that Applicants file a translation of the priority document at this time.

3. Rejection Under 35 U.S.C. §102

Claims 1-9, 13-32, 34, 36-42, and 44-46 have been rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,159,914 to DeCoster et al. ("DeCoster"). Applicants disagree, and therefore respectfully traverse this rejection.

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In order to anticipate a claim under 35 U.S.C. §102, a reference must contain all elements of the claim. See *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379, 231 USPQ 81, 90 (Fed. Cir. 1986). DeCoster does not contain all of Applicants' claim elements, and thus, does not anticipate the presently claimed invention.

As recognized by the Examiner on page 3, lines 10-11 of the Office Action, DeCoster "fails to teach amphoteric/anionic surfactant ratios...." However, each of the independent claims of the present invention are directed to compositions or processes "wherein the amphoteric surfactant/anionic surfactant ratio by weight is greater than or equal to 0.2:1." See, e.g., Claim 1. Accordingly, for at least this reason, DeCoster fails to anticipate the present invention. Applicants therefore respectfully request that the rejection under 35 U.S.C. §102 be withdrawn.

4. Rejection Under 35 U.S.C. §103

Claims 1-46 have been rejected by the Examiner under 35 U.S.C. §103(a) as obvious over DeCoster in view of WO 95/01152 to Wells et al. ("Wells") and U.S. Patent No. 5,476,649 to Naito et al. ("Naito"). Applicants disagree, and therefore respectfully traverse the rejection.

Further to 35 U.S.C. § 103(c), Applicants respectfully submit that, in light of the Request for a Continued Prosecution Application filed herewith, DeCoster is no longer applicable prior art. See M.P.E.P. 706.02(I)(1). Current § 103(c) states that, for applications filed on or after November 29, 1999, subject matter which was prior art under 35 U.S.C. § 102(e) is disqualified as prior art against the claimed invention under

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